

## § 780.620

activities which are a necessary incident to conducting a livestock auction of the limited type permitted under the exemption. Such work as transporting the livestock and caring for it, custodial, maintenance, and clerical duties are included. Work which cannot be considered necessarily incident to the livestock auction is not exempt.

### § 780.620 Minimum wage for livestock auction work.

The application of the exemption is further determined by whether another condition has been met. That condition is that the employee, in the workweek in which he engages in livestock auction activities, must be paid at a wage rate not less than the minimum rate required by section 6(a)(1) of the Act for the time spent in livestock auction work. The exemption does not apply unless there is payment for all hours spent in livestock auction work at not less than the applicable minimum rate prescribed in the Act.

#### EFFECT OF EXEMPTION

### § 780.621 No overtime wages in exempt week.

In a workweek in which all the requirements of the section 13(b)(13) exemption are met, the employee is exempt from the overtime requirements of section 7 for that entire workweek.

## Subpart H—Employment by Small Country Elevators Within Area of Production; Exemption From Overtime Pay Requirements Under Section 13(b)(14)

#### INTRODUCTORY

### § 780.700 Scope and significance of interpretative bulletin.

Subpart A of this part 780 and this subpart together constitute the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(14) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for employees employed by certain country elevators “within the area of produc-

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tion,” as defined by the Secretary of Labor in part 536 of this chapter.

### § 780.701 Statutory provision.

Section 13(b)(14) of the Fair Labor Standards Act exempts from the overtime provisions of section 7:

Any employee employed within the area of production (as defined by the Secretary) by an establishment commonly recognized as a country elevator, including such an establishment which sells products and services used in the operation of a farm: *Provided*, That no more than five employees are employed in the establishment in such operations \* \* \*.

### § 780.702 What determines application of the exemption.

The application of the section 13(b)(14) exemption depends on the employment of the employee by an establishment of the kind described in the section, and on such employment “within the area of production” as defined by regulation. In any workweek when an employee is employed in country elevator activities by such an establishment within the area of production, the overtime pay requirements of the Act will not apply to him.

### § 780.703 Basic requirements for exemption.

The basic requirements for exemption of country elevator employees under section 13(b)(14) of the Act are as follows:

(a) The employing establishment must:

(1) Be an establishment “commonly recognized as a country elevator,” and

(2) Have not more than five employees employed in its operations as such; and

(b) The employee must:

(1) Be “employed by” such establishment, and

(2) Be employed “within the area of production,” as defined by the Secretary of Labor.

All the requirements must be met in order for the exemption to apply to an employee in any workweek. The requirements in section 13(b)(14) are “explicit prerequisites to exemption” and the burden of showing that they are satisfied rests upon the employer who asserts that the exemption applies

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(*Arnold v. Kanowsky*, 361 U.S. 388). In accordance with the general rules stated in § 780.2 of subpart A of this part, this exemption is to be narrowly construed and applied only to those establishments plainly and unmistakably within its terms and spirit. The requirements for its application will be separately discussed below.

### ESTABLISHMENT COMMONLY RECOGNIZED AS A COUNTRY ELEVATOR

#### § 780.704 Dependence of exemption on nature of employing establishment.

If an employee is to be exempt under section 13(b)(14), he must be employed by an “establishment” which is “commonly recognized as a country elevator.” If he is employed by such an establishment, the fact that it may be part of a larger enterprise which also engages in activities that are not recognized as those of country elevators (see *Tobin v. Flour Mills*, 185 F. 2d 596) would not make the exemption inapplicable.

#### § 780.705 Meaning of “establishment.”

The word “establishment” has long been interpreted by the Department of Labor and the courts to mean a distinct physical place of business and not to include all the places of business which may be operated by an organization (*Phillips v. Walling*, 334 U.S. 490; *Mitchell v. Bekins Van and Storage Co.*, 352 U.S. 1027). Thus, in the case of a business organization which operates a number of country elevators (see *Tobin v. Flour Mills*, 185 F. 2d 596), each individual elevator or other place of business would constitute an establishment, within the meaning of the Act. Country elevators are usually one-unit places of business with, in some cases, an adjoining flat warehouse. No problem exists of determining what is the establishment in such cases. However, where separate facilities are used by a country elevator, a determination must be made, based on their proximity to the elevator and their relationship to its operations, on whether the facilities and the elevator are one or more than one establishment. If there are more than one, it must be determined by which establishment the employee is employed and whether

that establishment meets the requirements of section 13(b)(14) before the application of the exemption to the employee can be ascertained (compare *Mitchell v. Cammill*, 245 F. 2d 207; *Remington v. Shaw* (W.D. Mich.), 2 WH Cases 262).

#### § 780.706 Recognition of character of establishment.

A further requirement for exemption is that the establishment must be “commonly recognized” as a country elevator. The word “commonly” means ordinarily or generally and the term “recognized” means known. An elevator should be generally known by the public as a country elevator. This requirement imposes, on the establishment for whose employees exemption is sought, the obligation to demonstrate that it engages in the type of work and has the attributes which will cause the general public to know it as a country elevator. The recognition which the statute requires must be shown to exist if the employer seeks to take the benefit of the exemption (see *Arnold v. Kanowsky*, 361 U.S. 388, 395).

#### § 780.707 Establishments “commonly recognized” as country elevators.

In determining whether a particular establishment is one that is “commonly recognized” as a country elevator—and this must be true of the particular establishment if the exemption is to apply—it should be kept in mind that the intent of section 13(b)(14) is to “exempt country elevators that market farm products, mostly grain, for farmers” (107 Cong. Rec. (daily ed.) p. 5883). It is also appropriate to consider the characteristics and functions which the courts and government agencies have recognized as those of “country elevators” and the distinctions which have been recognized between country elevators and other types of establishments. For example, in proceedings to determine industries of a seasonal nature under part 526 of the regulations in this chapter, “country” grain elevators, public terminal and subterminal grain elevators, wheat flour mill elevators, non-elevator-type bulk grain storing establishments, and “flat warehouses” in which grain is stored in sacks, have been recognized as distinct